BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JAMES MONTGOMERY)
Claimant)
VS.)
) Docket No. 228,632
FOUNTAINBLEAU APARTMENTS INC.)
Respondent)
AND)
)
LIBERTY MUTUAL INSURANCE CO.)
Insurance Carrier	,)

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on December 18, 1997.

ISSUES

Issues on appeal are (1) whether claimant suffered accidental injury arising out of and in the course of his employment and (2) whether claimant gave notice of accident as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge granting temporary total disability compensation and medical benefits should be affirmed.

The Appeals Board has jurisdiction to review the listed issues pursuant to K.S.A. 44-534a.

The Appeals Board finds that claimant did suffer accidental injury arising out of and in the course of his employment. This finding is based upon the claimant's testimony that he injured his back on September 25, 1997, while carrying a vanity top and additionally aggravated or worsened that condition carrying an electric snake on September 26, 1997.

The Appeals Board also finds that claimant gave notice within ten days of September 25, 1997. Respondent's witnesses acknowledge claimant advised them of the back injury within the required ten-day period. But one of the witnesses, Ronald Godfrey, denies that claimant informed him the injury occurred at work. Gyla Godfrey, on the other hand, testifies that during a phone conversation on October 6, 1997, claimant asked her about workers compensation benefits for his injury. The Board finds the notice given to respondent satisfies the statutory requirement.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Bryce D. Benedict dated December 18, 1997, should be, and the same is hereby, affirmed.

Dated this ____ day of March 1998. BOARD MEMBER

c: Patrick R. Nichols, Topeka, KS James K. Blickhan, Overland Park, KS Bryce D. Benedict, Administrative Law Judge Philip S. Harness, Director